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Letter dated 8 April 2005 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General

Upon instructions from my Government, I wish to bring to your attention the recent decision of the European Court of Human Rights (Third Section) as to the Admissibility of Application No. 46347/99 by Myra Xenides-Arestis against Turkey which is available on the website of the Court (http://www.echr.coe.int).*

On 4 November 1998, Ms. Xenides-Arestis had lodged a complaint against Turkey for a continuing violation of her rights under articles 8 of the European Convention on Human Rights and 1 of Protocol No. 1, submitting that since August 1974 she has been deprived of her property rights, all her property being located in the fenced-up area of Famagusta, which is under the occupation and the control of the Turkish military forces. She maintained that the latter prevent her from having access to, from using and enjoying her home and property.

By the said decision, the Court dismissed Turkey's pleas on inadmissibility on the grounds of (a) lack of jurisdiction *ratione temporis* and *ratione loci*, (b) the victim status of the applicant, and (c) the non-exhaustion of domestic remedies, and declared the application admissible.

With regard to Turkey's alleged lack of jurisdiction and responsibility for the acts in respect of which complaint was made, the Court recalled the case of *Loizidou v. Turkey*, in which it rejected Turkey's objection *ratione temporis* recognizing the continuing nature of the violations. Furthermore the Court noted:

> "the Annan Plan would have been a significant development and breakthrough in inter-communal negotiations had it come into force. Consequently no change has occurred since the adoption of the above-mentioned judgements by the Court which would justify a departure from its conclusions as to Turkey's jurisdiction. In this connection, the Court points out, firstly, that the fact that the two communities were treated as having equal status in the negotiations leading up to the referendums, does not entail recognition of the 'TRNC' or confer statehood thereupon. Secondly, the Court observes that the

* A copy of the decision is also available for consultation in the Secretariat, room S-3520.

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respondent Government continue to exercise overall military control over northern Cyprus and have not been able to show that there has been any change in this respect. Thirdly, the fact that the Greek-Cypriots rejected the Annan Plan does not have the legal consequence of bringing to an end the continuing violation of the displaced persons' rights for even the adoption of the plan would not have afforded immediate redress. In the light of the above the Court considers that the Government's pleas on inadmissibility on the grounds of lack of jurisdiction *ratione temporis* and *ratione loci* must be dismissed".

As far as the objections regarding the victim status of the applicant, the Court noted that the applicant had provided the Court with official certificates of ownership from the Department of Lands and Surveys of the Republic of Cyprus proving that she is the owner of the relevant property. Moreover it pointed out that the Government of Turkey had not substantiated their arguments disputing the applicant's victim status. Therefore the relevant objections of the Government of Turkey were also dismissed.

As regards the allegations of non-exhaustion of domestic remedies, the Court pointed out that the so-called Law No. 49/2003 enacted by Turkey's subordinate administration in the occupied part of Cyprus in respect of the purported deprivation of the applicant's property cannot be regarded as an "effective" or "adequate" means for redressing the applicant's complaints. The Court, inter alia, observed that the composition of the so-called compensation commission raises concerns since, in the light of the evidence submitted by the Cypriot Government, the majority of its members are living in houses owned or built on property owned by Greek Cypriots. In this connection, the Court observes that the respondent Government have not disputed the Cypriot Government's arguments on this matter and have not provided any additional information in their written and oral submissions.

The above-mentioned decision of the European Court of Human Rights sheds light on and provides answers to major legal questions inextricably linked with the substance of the Cyprus problem. We therefore earnestly believe that it can contribute in a constructive way and serve as guidance in our efforts to reach a just and lasting settlement of the Cyprus issue.

I should be grateful if you would have the present letter circulated as a document of the General Assembly, under agenda item 29, and of the Security Council.

(*Signed*) Andreas D. **Mavroyiannis**